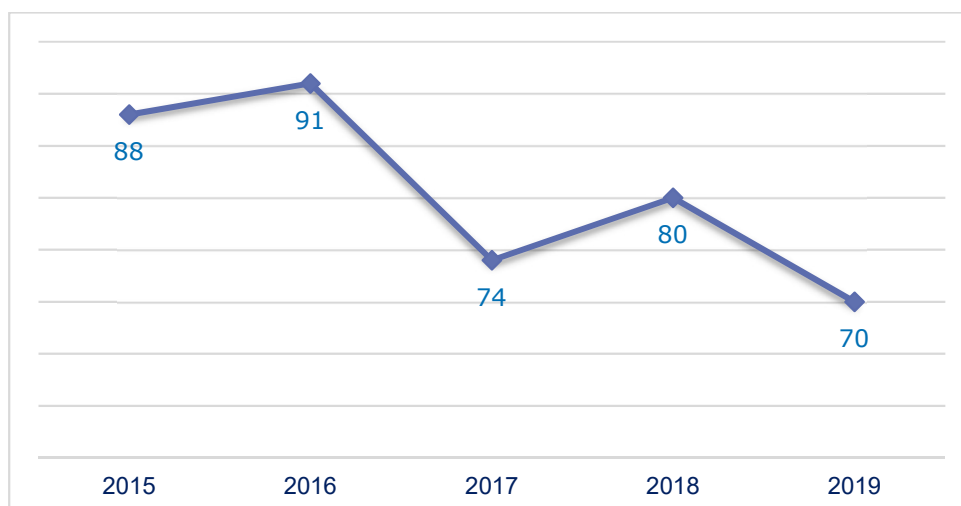


GERMANY

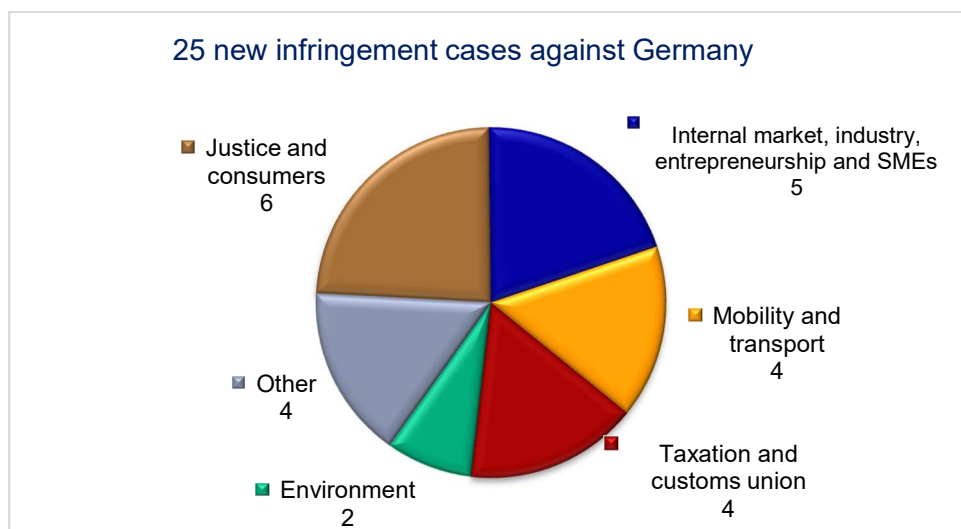
Monitoring the Application of EUROPEAN UNION LAW

2019 Annual Report

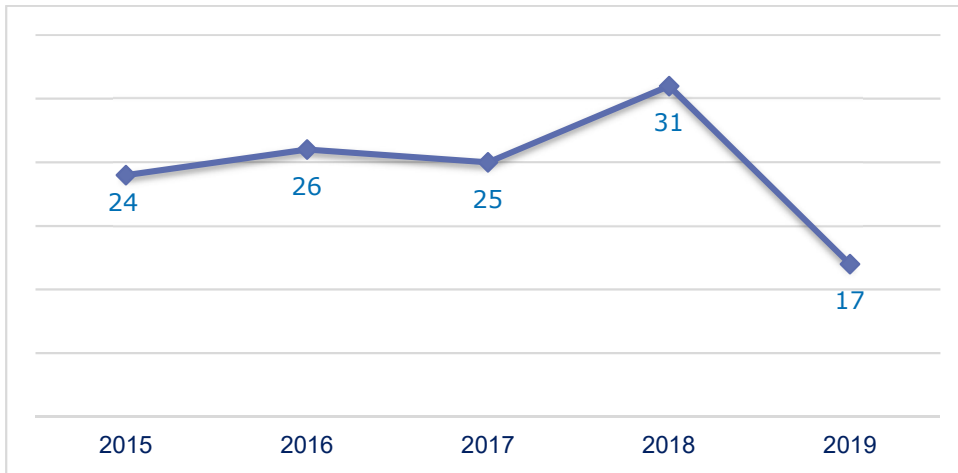
Infringement cases against Germany open on 31 December (2015-2019)



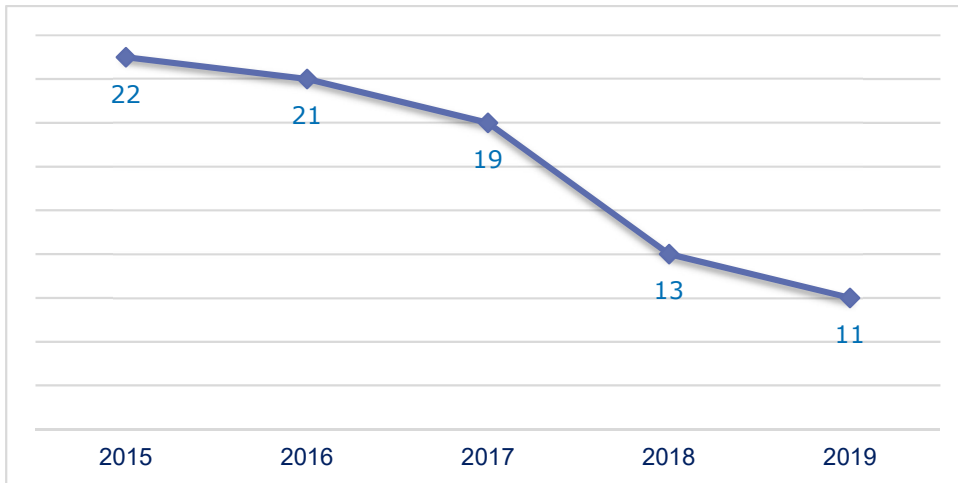
New infringement cases opened in 2019: main policy areas



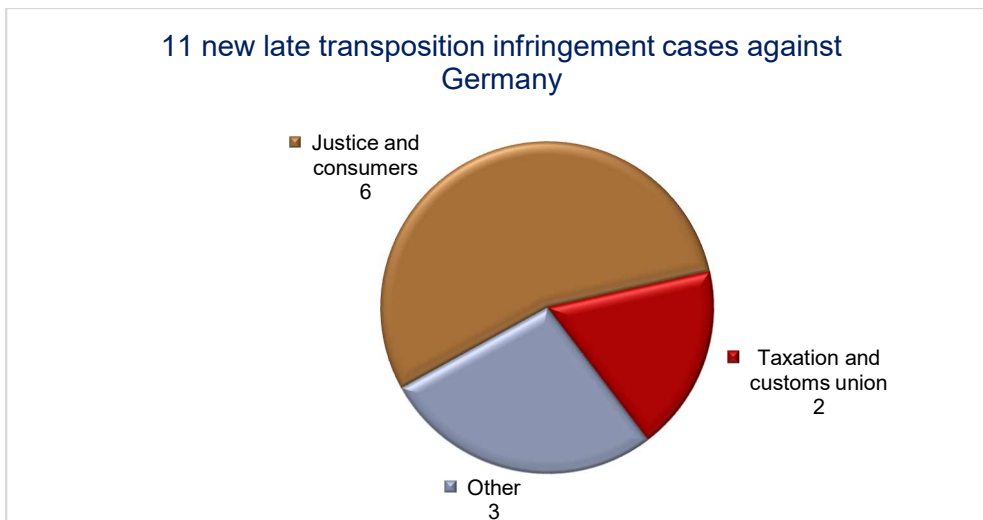
Late transposition infringement cases against Germany open on 31 December (2015-2019)



New late transposition infringement cases against Germany (2015-2019)



New late transposition infringement cases opened in 2019: main policy areas



IMPORTANT JUDGMENTS

Court rulings¹

The Court ruled that:

- Germany breached EU law by maintaining fixed tariffs for the planning services of architects and engineers²;
- Germany restricted the free movement of goods by introducing an infrastructure use charge and simultaneous relief from motor vehicle tax for vehicles registered in Germany³;
- Germany failed to fulfil its obligations under EU law, at the 25th session of the Revision Committee of the Intergovernmental Organisation for International Carriage by Rail, by having voted against the position of the EU, and having publicly opposed that position and the arrangements for the exercise of voting rights⁴;

Preliminary rulings

The Court addressed the following preliminary rulings to the German judiciary:

- prohibiting commercial providers of search engines and commercial service providers, which edit content of online press products, from making press products or parts of them available to the public is a breach of EU law⁵;
- freedom of information and freedom of the press cannot justify a derogation from the author's exclusive rights of reproduction and of communication to the public going beyond the exceptions or limitations provided for in EU law⁶;
- a phonogram producer can prevent the use of a sound sample of his or her phonogram in another phonogram. However, such sample can be used if it is included in the phonogram in a modified form unrecognisable to the ear⁷;
- the Gmail service should not be considered as consisting wholly or mainly in the "conveyance of signals". As a result, Gmail is not an electronic communications service, and is therefore not subject to the general authorisation regime under the current EU telecoms legislation⁸;
- the EU Regulation on shipments of waste⁹ does not apply to shipment mixtures of animal by-products and other substances transported between Member States¹⁰;
- the Austrian system of issuing an European arrest warrant, in which both public prosecutor's offices and courts are involved, is compatible with EU law¹¹;
- EU law does not designate directly, or by analogy, the law applicable to the third-party effects of the assignment of claims¹²;
- the operator of a website that features a Facebook 'Like' button can be a controller jointly with Facebook in respect of the collection and transmission to Facebook of the personal data of visitors to its website¹³;
- a pre-ticked box cannot be considered as valid consent to the processing of personal data. The information that the service provider must give to a user includes the duration of the operation of cookies and whether or not third parties may have access to those cookies¹⁴;

¹ These rulings are almost exclusively handed down in infringement procedures.

² *Commission v Germany*, Case [C-377/17](#).

³ *Austria v Germany*, Case [C-591/17](#).

⁴ *Commission v Germany*, Case [C-620/16](#), Decision [2014/699/EU](#).

⁵ *VG Media*, Case [C-299/17](#).

⁶ *Funke Medien NRW*, Case [C-469/17](#).

⁷ *Pelham and others*, Case [C-476/17](#).

⁸ *Google*, Case [C-193/18](#).

⁹ Regulation (EC) No [1013/2006](#).

¹⁰ *ReFood GmbH & Co. KG v Landwirtschaftskammer Niedersachsen*, Case [C-634/17](#).

¹¹ *NJ*, Case [C-489/19 PPU](#).

¹² *BNP Paribas*, [C-548/18](#).

¹³ *Fashion ID*, Case [C-40/17](#).

¹⁴ *Planet 49*, Case [C-673/17](#).

- in case of insolvency of the employer, a reduction in a former employee's old-age benefits must be regarded as being manifestly disproportionate if that person is living, or would have to live, below the at-risk-of-poverty threshold determined by Eurostat for the Member State concerned¹⁵;
- an applicant 'absconds' within the meaning of the Dublin Regulation if he deliberately evades the reach of the national authorities in order to prevent the transfer. It may be presumed that that is the case if the transfer cannot be carried out due to the fact that the applicant has left the accommodation allocated to him without informing the competent national authorities, provided that he has been informed of his obligations in that regard¹⁶;
- the VAT exemption for school and university education does not cover driving school tuition provided by a driving school for the purpose of acquiring driving licences for vehicles in categories B and C1, even if the objective of such tuition is not purely recreational, since possession of such licences is liable to meet, among other things, professional needs¹⁷;
- the customs authorities may require that an applicant for the status of an 'authorised economic operator' provide them with the tax identification numbers concerning solely the natural persons who are in charge of the applicant or who exercise control over its management and those who are in charge of the applicant's customs matters, and the details of the tax offices responsible for the taxation of all those persons¹⁸;
- the legislation of a Member State which effectively taxes dividends paid to foreign pension funds at a higher rate than dividends paid to domestic pension funds is contrary to the free movement of capital as established by Article 63 TFEU¹⁹;
- where EU customs regulations require providing a specific indication of the country of origin for a product (in this case, cultivated mushrooms that had been relocated during the growing process), the country of origin is that where the product was harvested, and that indication as such cannot be regarded as misleading consumers. In such circumstances, no obligations may be imposed on the food business operators to provide information additional to the indication of the country of origin in order to prevent any alleged risk of misleading consumers²⁰;
- the protection of the name 'Aceto Balsamico di Modena (PGI)', entered in the register of protected designations of origin and protected geographical indications, does not extend to the use of the individual non-geographical terms of that name, namely 'aceto' and 'balsamico'²¹;
- in relation to the greenhouse gas emission allowance trading system (EU ETS), the Court of Justice confirmed the literal interpretation of an 'electricity generator', which includes an industrial plant even if the main activity of that plant does not fall under the scope of the EU ETS, the plant produces electricity mainly for its own use, and the amount of electricity sold to third parties is minimal²²;
- an exception from the use of tachographs does not apply to vehicles used for the carriage of live animals directly from farms to local slaughterhouses²³;
- A Member State may refuse to recognise a driving licence which has been issued by another Member State, without a test of fitness to drive, on the basis of a driving licence issued by another Member State based on the exchange of a driving licence issued by a third country²⁴;
- the direct award of contracts for public passenger transport services by bus that do not take the form of service concessions is not subject to the Regulation on public passenger transport services by rail and road²⁵;

¹⁵ *Pensions-Sicherungs-Verein*, Case [C-168/18](#).

¹⁶ *Abubacarr Jawo*, Case [C-163/17](#).

¹⁷ *A & G Fahrschul-Akademie*, Case [C-449/17](#).

¹⁸ *Deutsche Post AG v Hauptzollamt Köln*, Case [C-496/17](#).

¹⁹ *College Pension Plan of British Columbia*, Case [C-641/17](#).

²⁰ *Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main*, Case [C-686/17](#).

²¹ *Consorzio Tutela Aceto Balsamico di Modena*, Case [C-432/18](#) and Court press release [150/19](#).

²² *ExxonMobil Production Deutschland*, Case [C-682/17](#).

²³ *NK*, [C-231/18](#), Regulation (EC) No [561/2006](#), Regulation (EU) No [165/2014](#).

²⁴ *Meyn*, [C-9/18](#), Directive [2006/126/EC](#).

²⁵ *Joined cases: C-266/17 and C-267/17 Verkehrsbetrieb Hüttebräucker and BVR Busverkehr Rheinland*, Court press release [46/2019](#), Regulation (EC) [1370/2007](#).

- an air carrier is only required to compensate passengers for a long delay caused by damage to an aircraft tyre if it fails to prove that it deployed all means at its disposal for limiting the delay of the flight²⁶;
- the system of airport charges is to be approved by an independent supervisory authority and must be mandatory for all airport users²⁷;
- exception from the application of certain social legislation covers only vehicles that are used exclusively, during a particular transport operation, for the purpose of delivering items as part of the universal postal service²⁸;
- the coercive detention of a person at the head of the Land of Bavaria for the purpose of enjoining them to adopt measures to improve ambient air quality in Munich can be ordered only if a national legal basis, which is sufficiently accessible, precise and foreseeable in its application, exists and if the detention is proportionate²⁹;
- residues in the form of scrap metal and fire-extinguishing water mixed with sludge and cargo residues, attributable to damage occurring on board a ship at sea, must be regarded as waste generated on board ships, within the meaning of the Regulation on shipments of waste. Such waste is, therefore, excluded from the said Regulation's scope until it is offloaded in order to be recovered or disposed of³⁰.

²⁶ *Germanwings*, Case [C-501/17](#), Court press release [45/2019](#), Regulation (EC) [261/2004](#).

²⁷ *Deutsche Lufthansa*, Case [C-379/18](#), Directive [2009/12/EC](#).

²⁸ Joined cases *Deutsche Post and Leymann* and *UPS Deutschland and Others* [C-203/18](#) and [C-374/18](#), Regulation (EC) [561/2006](#).

²⁹ *Deutsche Umwelthilfe*, Case [C-752/18](#) and Court press release [164/2019](#).

³⁰ *Conti 11. Container Schiffahrt*, Case [C-689/17](#), Regulation (EC) [1013/2006](#).